which the learned President fixed at $50.00 per month, the sum of $320.00 per month becomes the standard rent of the premises with the furniture. The Landlord was not seeking to obtain rent in excess of these amounts and which were, in fact, the rents he and the Tenant had agreed for the first period of the Tenancy.

The decision will therefore be varied accordingly.

Order accordingly.

M. K. VARMA & ANOTHER v. K. M. OLI MOHAMED.

[Orig. Civ. Juris. (Gordon-Smith, J.) January 27, 1950]

[Singapore — Civil Suit No. 400 of 1948]

Practice — Action brought by partners for breach of agreement entered into by them on behalf of partnership — Necessity of joining other partners as plaintiffs — Rules of the Supreme Court, Order 46.

This was an action brought by the plaintiffs for alleged breach of an agreement entered into by the plaintiffs as partners in and for and on behalf of a partnership. It was submitted on behalf of the defendant that the plaintiffs were not entitled to maintain the suit in their personal capacities.

Held, that the plaintiffs had the alternatives of joining all the partners as plaintiffs or of taking advantage of the special procedure by suing in the firm name and as they had failed to take either alternative, the claim must be dismissed.

Cases referred to:—

(1) *Re Vagliano Anthracite Colliery Co. Ltd.* 103 L.T.R. 211.

(2) *Performing Right Society Ltd. v. London Theatre of Varieties* (1924) 1 A.C. 1 at p. 18.

CIVIL SUIT.

A. N. Mitra for the plaintiffs.

Dr. C. H. Withers-Payne for the defendant.

Gordon-Smith, J.: — At the conclusion of the case for the Plaintiffs and on submissions made by Dr. Withers-Payne for the Defendant, I dismissed the claim with costs, and the counterclaim being thereupon withdrawn, I said that I would give my reasons later, in writing.

During numerous adjournments which had been necessary I had had ample opportunity of considering the claim and pleadings in the suit and also, from time to time, the evidence given by the 1st Plaintiff M. K. Varma and his witnesses.

I had also anticipated that Dr. Withers-Payne would at the close of the Plaintiffs' case, make the submissions he did.

These submissions were two-fold (a) a point of law and (b) on the facts, namely that the Plaintiffs had wholly failed to prove and substantiate their claims and allegations.

Dr. Withers-Payne submitted firstly that the two Plaintiffs were not entitled to maintain this suit in their personal capacities as individuals and as framed in the Writ of Summons.

The endorsement of the Writ of Summons claims damages for breach of an agreement dated the 3rd April 1947. The action is therefore one based on contract. The breach of this agreement made between the Plaintiffs and Defendant as alleged is failure to manage and run a Cinema, known as the Hind Theatre at Sembawang, in accordance with the terms and conditions of this agreement. The Statement of Claim amplifies this endorsement and attaches a copy of this agreement.

It is not alleged anywhere in the Writ of Summons or Statement of Claim that the two Plaintiffs are suing for and on behalf of a partnership but it is abundantly clear, not only from a perusal of this agreement but from the evidence subsequently given, that this agreement was in fact entered into, as specifically recited therein, by the two Plaintiffs as partners in and for and on behalf of a partnership which was running this Hind Theatre and had been running it for approximately six months prior to the date of this agreement, apart from any verbal evidence in this respect and which was wholly unreliable, the agreement itself, together with the certificate of the Registrar of Business Names (Exhibit D. 3) which shows that this partnership commenced in October 1946, proves these facts conclusively.

The first point is therefore, can the two Plaintiffs maintain this suit in their personal and individual capacities for breach of an agreement which they have entered into as agents for disclosed principals? I was and am of the opinion that they cannot. I would here refer to the original defence filed on the 26th November 1948 which specifically raises this point after there had previously been correspondence between the respective solicitors and a demand made (27.9.48) for names of the partners and details. This demand was refused, such refusal being persisted in and there has been no amendment sought by the Plaintiffs of the form in which the suit was commenced, in order to comply with the Special Procedure laid down by Order 46 and rules thereunder. This procedure is applicable but I agree that where it is not applicable, partners may sue or be sued individually in their own names.

The Plaintiffs had the alternatives of joining all the Partners as Plaintiffs or of taking advantage of the special procedure by suing in the firm name. They have consistently refused to do so.

Dr. Withers-Payne referred to authorities of which *Re Vagliano Anthracite Colliery Co. Ltd.*[1] and *Performing Right Society Ltd. v. London Theatre of Varieties*[2] appear to be particularly relevant in these respects. Unless the partners are named, the firm is not before the Court. I would also refer to *Lindley*, 10th Edition at p. 348: "With respect to other simple contracts, whether written or verbal, where a contract is entered into with several persons jointly they should all join in an action upon it." And again at page 350: "One partner may sue alone on a written contract made with himself if it does not appear from the contract itself that he was acting as agent for a firm: and one partner ought to sue alone on a contract entered into with himself, if such contract is in fact made with him as principal and not on behalf of himself and others."

I would also refer to the Annual Practice p. 270 O.16 R. 11 as regards misjoinder and non-joinder of parties and the note thereon "The rule however in no way qualifies the necessity for having before the court the proper parties for determining the point at issue." If I understood Mr. Mitra correctly he submitted that the two Plaintiffs were not only entitled to maintain this Suit individually and in their personal capacities but were also entitled in such capacities to the fruits of any success that might thereby be gained, a somewhat surprising submission, in view of the specific terms of the agreement of the 3rd April 1947 and its recitals.

As regards the facts, I would have had more hesitation in dismissing the claim on, more or less, technical grounds, had I thought that there was any merit in the claim. On such facts it is abundantly clear that the Plaintiffs have wholly and absolutely failed to substantiate their claims and assertions.

It was quite impossible to place any reliance on any relevant matters asserted by the Plaintiff M. K. Varma and his witnesses, two of whom, at least, committed deliberate perjury.

I should have taken strong action in this latter respect had I been satisfied that these two witnesses were solely responsible for such perjury but I was not so satisfied.

It was unnecessary therefore to call on the Defendant for his Defence but it does appear that there would have been a further and complete answer to the claim. I refer to Clause 9 of the agreement and to the Defendant's letters to the Plaintiffs dated 28th April 1947, 21st May 1947, 9th June 1947 and the 2nd July 1947.

The claim is therefore dismissed with costs payable by the Plaintiffs, and the Defendant having withdrawn his counterclaim he must pay any costs arising therefrom, such costs to be deducted from the amount payable by the Plaintiffs.

Claim and Counterclaim dismissed.

PEENA MOONA MOHAMED ABDUL HAMEED & ANOTHER v. CHUA YAM QUEE.

[Orig. Civ. Juris. (Gordon-Smith, J.) February 27, 1950]

[Singapore — Originating Summons No. 207 of 1949]

Debtor and Creditor (Occupation Period) Ordinance, 1949, s. 4(2)(b)(iii) — Mortgage paid off during occupation — Meaning of "such extended period as was mutually agreed".

The facts in this matter were as follows:— By an Order of Court of 24th September 1941 the applicants were authorised, as Trustees, to mortgage the property in question and in pursuance thereof by Mortgage dated 11th November 1941 conveyed the property to the respondent. The amount of the mortgage was $17,000.00 expressed to be repayable on the 11th December 1941 and interest thereon. By notice dated 28th April 2603 (1943) the respondent required payment of the mortgage. As a result the applicants had to apply to Court to sanction a fresh mortgage and this caused delay in repayment. The respondent did nothing to enforce his security by sale or foreclosure and eventually after considerable delay and correspondence the mortgage money and all interest was repaid and a reconveyance dated 9th February 2604 (1944) was executed and registered in the Registry of Deeds on the 18th of March 1944. On the 26th September 1949 the respondent gave a notice to the Registrar of Deeds under s. 18 of the Dealings in Land (Occupation Period) Ordinance prohibiting any dealings with the land without due notice. The applicants in this Originating Summons asked (a) for an Order to declare that the mortgage was discharged by the reconveyance of 1944 and (b) for an Order that the notice in the Registry of Deeds be removed and the Registry of Deeds be rectified. The respondent claimed under s. 4 (2) (b) (iii) of the Debtor and Creditor (Occupation Period) Ordinance for a revaluation and argued that the amount due had not been paid "within three months of demand or within such extended period as was mutually agreed between the creditor or his agent and the debtor or his agent."

Held, that on the facts of this case, the period for repayment had been extended by mutual agreement and the respondent was estopped from saying or attempting to prove otherwise.

ORIGINATING SUMMONS.

G. E. N. Oehlers for the applicants.

Chong Thutt Pitt for the respondent.

The facts and arguments appear sufficiently from the Judgment.

Cur. Adv. Vult.